Cr.A. 486/95 Division Bench (Criminal) (02)

/- APPEAL OF PRISONER -/

No. 286 Name कुन्नामी हुरी

Father's Name डेरा Residence ग्राम - सेमली पटेलपारा थाना - किरन्दुल

Age 30 Sentenced to आजीवन कारावास on

12.10.95 under Section 302,34 I.P.C by I A.S.J. Jagdalpur

S.T.No. 611/93

It is explained to the prisoner that if he states or Wishes to be represented by a legal practitioner the Appellate Court will not proceed with the base for seven days unless the legal practitioner appears. If the legal practitioner does not appear with the seven days he may be heard at all if the prisoner states that the does not wish to be represented by legal practioner the Court may proceed at once with the case and will not be obliged to give a hearing to any legal proct-itioner who should appear.

1. Date of application for copy of Judgement : No.
2. Date of which copy received :- 12.10.95
3. Date on which Appelisent :- 16.10.95
4. Whether the prisoner wished to be represented or not ~~Yes/No.~~

No. 286 Name कुन्नामी हुरी s/o डेरा

Continued in Distt. Jail Jagdalpur

No. 165 /Octagon/95 Dated 16/10/95

Forwarded to the CHIEF JUDICIAL MAGISTRATE Jagdalpur together with a copy of judgement or order passed in the case for favour of transmission to the proper Appliate Court.

Superintendent
Distt. Jail Class I Jagdalpur
Superintendent-Central/Distt./Sub Jail.

Date of receipt in C.J.M's Office. 16.10.95

Date of receipt of record of accompany. —

Memo of Appeal of the Appelliate Court.

No. 64(3) Dated 15.10.95

Forwarded to the H'ble Sessions Judge DNR.

C.J. Magistrate 17.10.95

Date of receipt of Appelliate Court. with 2

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(15)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cri. Appeals No. 487/96 and 486/96

मामला क्रमांक ..... सन् 200

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

D.B. : HON'BLE SHRI LAL CHAND BHADOO, J. AND HON'BLE SHRI VIJAY KUMAR SHRIVASTAVA, J.

15-12-2005

Mrs. Kiran Jain, counsel for the accused/appellants.
Mr. G.K.Beriwal, Deputy Advocate General for the respondent/State.

Heard.

ORAL JUDGMENT

1. Criminal Appeal No.487/1996 filed by Kunjami Deva and Criminal Appeal No.486/1996 filed by Kunjami Hurra are arising out of the same incident and the same judgment, therefore, they are being disposed of by this common judgment.

2. This appeal is directed against the judgment of conviction and order of sentence dated 12-10-1995 passed by Mr. K.P.Kurre, Ist Additional Sessions Judge, Bastar in Sessions Trial No.611/93, whereby the learned Additional Sessions Judge, after holding the accused/appellants guilty for commission of the offence punishable under Section 302 read with Section 34 of the

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आदेश पत्रक

मामला क्रमांक —2— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Indian Penal Code, sentenced them to undergo imprisonment for life.

3. The case of the prosecution, in brief, is that, on 25-9-1993, at about 8 P.M., P.W.-3, Joga was taking rest after dinner. On hearing the sound of quarrel, he came out of the house and saw that, at some distance, some persons were beating a person, he went there and saw that, the accused Kunjami Deva and Kunjami Hurra were attacking Ediya. Ediya was lying on the ground. He asked the accused persons not to assault, on which both of them ran away. There was injury on the head of Ediya and blood was oozing out of the injury. He tried to get up Ediya, but Ediya was not able to get up and he died. On which, Joga informed the father of Ediya namely Pandu, on which Pandu and his younger brother Dora came to the scene of occurrence and saw that Ediya has already died and took the body of Ediya to their house. In the morning, a Panchayat was convened and thereafter an F.I.R., Ex.P-4 was lodged in Police Station, Kirandul. Merg Intimation, Ex.P-5 was recorded. B.S.Netam , the Station House

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मामला क्रमांक —3— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Officer, Police Station Kirandul took up the investigation. After giving notice to the Panchas under Ex.P-1, he prepared a Panchnama of the dead body under Ex.P-2. On 27-9-1993, the body was sent for post mortem examination to the Primary Health Centre, Kirandul under Ex.P-6. Clothes of the deceased were taken into possession. Post mortem was conducted by P.W.-6, Dr. A.K.Singh, who, after conducting the post mortem, prepared a post mortem report, Ex.P-17. After completion of the investigation, a charge-sheet was filed against the accused/appellants for commission of the offence punishable under Section 302 read with Section 34 of the Indian Penal Code in the Court of Judicial Magistrate First Class, Dantewada, who, in turn, committed the case to the Sessions Judge, Jagdalpur, wherefrom learned Ist Additional Sessions Judge received the case on transfer for trial. 4. The prosecution, in order to prove the charge, examined as many as 6 witnesses. Statements of the accused/appellants were recorded by the learned Additional	

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मामला क्रमांक —4— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Sessions Judge, in which they denied the prosecution evidence and stated that they have been falsely implicated in the crime.

5. Learned Additional Sessions Judge, after hearing the arguments of learned counsel for both the parties, convicted and sentenced the accused/appellants as mentioned in para 2 of this judgment.

6. We have heard Mrs. Kiran Jain, learned counsel for the accused/appellants and Mr. G.K.Beriwal, Deputy Advocate General for the respondent/State.

7. The fact of homicidal nature of the death of Ediya has not been disputed by learned counsel for the accused/appellants. Apart from that, from the ocular evidence of P.W.-3, Madkami Joga and the medical evidence of P.W.-6, Dr. A.K.Singh, who conducted the post mortem on the body of Ediya and has stated that, there was two cut wounds behind the head, out of them, one was on the right side of the head above the ear, brain material was coming out

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आदेश पत्रक

मामला क्रमांक ....-5-.... सन् 200

.....विरुद्ध.....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

of the cut wound of the head, which was on account of the fracture of skull and the injuries were homicidal in nature, and his report is Ex.P-17, it is established that, the death of Ediya was homicidal in nature.

8. So far as the question of involvement of the accused/appellants in committing the murder of Ediya is concerned, even though P.W.-1, Tamo Soma and P.W.-2, Madvi Pandu, the father of the deceased Ediya, in their examination-in-chief, have stated that, in the Panchayat, the accused/appellants had made extra judicial confession that they have committed the murder of Ediya, but in their cross-examination, they have stated that, the accused/appellants had not made any extra judicial confession before the Panchayat in their presence, therefore, their evidence is of no use. P.W.-3, Madkami Joga is the eye witness, who has stated that, on the fateful day, he was at his residence. When the accused/appellants were attacking Ediya, he came out of his house and saw that the accused Hurra was having an axe and the accused Deva was having a wooden club and they were

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मामला क्रमांक —६— सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

attacking Ediya, as a result of which, he fell down on the earth. On seeing him, the accused/appellants ran away. The head of Ediya was burst and blood was coming out of it and he had died.

9. Learned counsel for the accused/appellants argued that, in the cross-examination, P.W.-3, Madkami Joga has stated that, there was nobody at the scene of occurrence, and from this, it is established that, this witness has not witnessed the crime, at least the accused/appellants attacking the deceased Ediya. We do not find any force in this argument. On examining the whole evidence of this witness, we find that, in examination-in-chief, he has clearly stated that, he witnessed the crime and saw that the accused Hurra was carrying an axe and the accused Deva was carrying a wooden club. In cross-examination also, he has stated that, he saw Ediya while falling on the ground, and he informed the father of Ediya that the accused persons Deva and Hurra have murdered his son. From perusal of the evidence of this witness, it seems that, the words, "he did not see anybody at the place of occurrence", refer to any other person witnessing the crime. There

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आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

is nothing in the cross-examination that, this witness was on inimical relation with the accused/appellants or he has deposed against them just to implicate them in a false case. In fact, from perusal of the whole evidence of this witness, it is established that, he witnessed the crime. The evidence of this witness finds support from the facts that, the axe and club were recovered at the instance of the accused/appellants under memoranda given by them under Section 27 of the Evidence Act i.e. Ex.P-9 and Ex.P-10, and that, the club and axe were recovered under Ex.P-11 and Ex.P-12 respectively at the instance of the accused persons. The evidence of this witness and the recovery of the weapons further stand corroborated by the evidence of P.W.-6, Dr. A.K.Singh, who has stated that, there were incised wounds on the head of the deceased and brain material was coming out of that and the injuries were caused by hard and blunt object. P.W.-6, Dr. A.K.Singh has further stated that, on the request of the Police, he examined the club and opined that the injuries which were found on the dead body could be caused by the same club. Therefore,

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विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	the evidence of P.W.-3, Madkami Joga inspires confidence of the Court and there is no reason to disbelieve his evidence. Therefore, the finding of the trial Court, convicting the accused/appellants under Section 302 read with Section 34 of the Indian Penal Code for committing murder of Ediya, is based on legal evidence. We do not find any substance in the appeals. No interference is called for. 10. In the result, the appeals, being devoid of merit, are dismissed. **Sd/-** **L.C. BHADOO** **Judge**	**Sd/-** **Vijay Kumar Shrivastava** **Judge**

G.Singh

28.12.05 28.1.06

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